



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Gikenyi B & 5 others v Mohamud & 4 others; Law Society of Kenya  
(Interested Party) (Petition E678 of 2024) [2026] KEHC 1525 (KLR)  
(Constitutional and Human Rights) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E678 OF 2024**

**B MWAMUYE, J**

**FEBRUARY 12, 2026**

**IN THE HIGH COURT OF KENYA NAIROBI CONSTITUTIONAL  
AND HUMAN RIGHTS DIVISION PETITION NO. E678 OF 2024**

**IN THE MATTER OF IRREGULAR, ILLEGAL & UNCONSTITUTIONAL APPOINTMENT  
OF MR. ABDI AHMED MOHAMUD, MBS, AS THE SECRETARY AND CHIEF  
EXECUTIVE OFFICER OF THE ETHICS AND ANTI-CORRUPTION COMMISSION  
(EACC) THROUGH GAZETTE NOTICE NO. 16100 DATED 5TH DECEMBER 2024**

**AND**

**IN THE MATTER OF THE CONSTITUTIONAL VALIDITY OF SECTION 16(1) OF  
THE ETHICS AND ANTI-CORRUPTION COMMISSION ACT NO. 22 OF 2011**

**AND**

**IN THE MATTER OF ALLEGED VIOLATIONS OF OR THREATS OF VIOLATIONS  
OF ARTICLES 1, 2, 3(1), 10, 19, 20, 21, 22, 23, 24, 25, 27, 28, 47, 73, 74, 75(1),  
79, 93, 94, 95, 159, 162(1), 165(1),(3)(A,B&(D)(I-III)), 232(1)(G), 236, 249, 250,  
250(12), 252(1)(C), 258, 259(1) AND 260 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED VIOLATIONS OF OR THREATS OF VIOLATIONS  
OF RIGHTS OR FUNDAMENTAL FREEDOMS IN THE BILL OF RIGHTS UNDER  
ARTICLES 10,19,20,21,24,25,27,28 & 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF RULE 4,10,11,13 OF THE CONSTITUTION OF KENYA  
(SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL  
FREEDOMS)-HIGH COURT PRACTICE AND PROCEDURE RULES 2013)**

**AND**



**IN THE MATTER OF DOCTRINES OF BILL OF RIGHTS,  
CONSTITUTIONALISM, RULE OF LAW AND LEGITIMATE EXPECTATIONS**

**BETWEEN**

**DR MAGARE GIKENYI B ..... 1<sup>ST</sup> PETITIONER**  
**ELIUD KARANJA MATINDI ..... 2<sup>ND</sup> PETITIONER**  
**OKIYA OMTATAH OKOITI ..... 3<sup>RD</sup> PETITIONER**  
**DISHON KEROTI MOGIRE ..... 4<sup>TH</sup> PETITIONER**  
**PHILEMON ABUGA NYAKUNDI ..... 5<sup>TH</sup> PETITIONER**  
**LEVI MUNYERI ..... 6<sup>TH</sup> PETITIONER**

**AND**

**MR ABDI AHMED MOHAMUD ..... 1<sup>ST</sup> RESPONDENT**  
**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**  
**THE NATIONAL ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT**  
**THE SENATE ..... 4<sup>TH</sup> RESPONDENT**  
**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. Before this Court for determination is a Constitutional Petition dated 10<sup>th</sup> December 2024, instituted in the public interest by the Petitioners. The Petition calls into question the legality and constitutionality of the process that culminated in the appointment of the 2<sup>nd</sup> Respondent as the Secretary and Chief Executive Officer of the 1<sup>st</sup> Respondent. At its core, the dispute raises a weighty constitutional issue concerning the proper balance between the functional independence of constitutional commissions and the oversight mandate of Parliament. In particular, the Petitioners challenge the constitutionality of Section 16(1) of the *Ethics and Anti-Corruption Commission Act*, No. 22 of 2011, which requires that the appointment of the Secretary/Chief Executive Officer of the Ethics and Anti-Corruption Commission be undertaken “with the approval of the National Assembly.”
2. The material facts giving rise to the Petition are largely uncontested. On 17<sup>th</sup> September 2024, the 1<sup>st</sup> Respondent, the Ethics and Anti-Corruption Commission (EACC), advertised the vacant position of Secretary/Chief Executive Officer. A competitive recruitment process followed, at the conclusion of which the 2<sup>nd</sup> Respondent, Mr. Abdi Ahmed Mohamud, emerged as the successful candidate.
3. Pursuant to Section 16(1) of the EACC Act, the name of the 2<sup>nd</sup> Respondent was subsequently forwarded to the 4<sup>th</sup> Respondent, the National Assembly, for approval. The National Assembly,



acting through its Departmental Committee on Justice and Legal Affairs, undertook a vetting process and issued a public invitation for memoranda on 27<sup>th</sup> November 2024. The Petitioners submitted memoranda opposing the approval of the nominee, contending principally that the National Assembly lacked the constitutional authority to subject the appointment to an approval process.

4. Despite these objections, the National Assembly approved the nomination of the 2<sup>nd</sup> Respondent on 4<sup>th</sup> December 2024. Thereafter, the Chairperson of the 1<sup>st</sup> Respondent formally appointed the 2<sup>nd</sup> Respondent through Gazette Notice No. 16100 dated 5<sup>th</sup> December 2024, for a six-year term with effect from 11<sup>th</sup> January 2025. It is this sequence of events anchored on the impugned Section 16(1) of the EACC Act that the Petitioners seek to have declared unconstitutional and nullified. Consequently, the Petitioners urge this Court to grant the following orders:
  - i. That a Declaration is hereby made that section 16(1) of *Ethics and Anti-Corruption Commission Act* No. 22 of 2011 is unconstitutional, null and void.
  - ii. That flowing from above declaration, this honorable court is pleased to void section 16(1) of *Ethics and Anti-Corruption Commission Act* No. 22 of 2011.
  - iii. That a Declaration is hereby made that involvement of the National Assembly and/or any other organ or any other person except independent commissions themselves in the process of recruitment of the staff and/or secretary/chief executive officer (CEO) of the 1<sup>st</sup> Respondent (Ethics and Anti-corruption Commission, EACC) and/or any other independent commissions and offices is ultravires, unconstitutional, null and void.
  - iv. That a declaration is hereby made that involvement of the National Assembly or any other organ or any other person except independent commission itself in the process of recruitment of any staff and/or secretary/chief executive officer(CEO) of the 1<sup>st</sup> respondent(Ethics and Anticorruption Commission, EACC) and/or any other independent commissions and offices is ultravires and is contrary to various constitutional provisions inter alia article 1, 2, 3(1), 10, 19, 20, 21,22,23,24,25,27,28,47,73,74,75(1),79,93,94,95,159,232,232(1)(G),236, 249, 250, 250(12), and 252 (1)(C) of *the constitution* and the same is unconstitutional, null and void.
  - v. That pursuant to orders above, the court is pleased to issue an order of judicial review by way of Certiorari , quashing the gazette notice no 16100 dated 5<sup>th</sup> December 2024 and/or any other gazette notice and/or any document of any other date appointing Mr. Abdi Ahmed Mohamud, MBS, and/or any other person appointed pursuant to section 16(1) of the EACC Act 2011 as the staff and/or Secretary/Chief Executive Officer Of the Ethics and Anti-Corruption Commission [EACC) and/or any other independent commissions and offices.
  - vi. That The court is pleased to issue an order of judicial review by way of PROHIBITION, prohibiting respondents from appointing and/or purporting to make any appointments/recruitments of any staff in regard to any position and/or the Secretary/Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC) by dint of section 16(1) of EACC Act, 2011.
  - vii. That The court is pleased to issue an order of judicial review by way of prohibition, prohibiting any staff and/or 2<sup>nd</sup> respondent(Mr. Abdi Ahmed Mohamud, MBS, and/or any other person appointed pursuant to section 16(1) of the EACC Act, 2011 from acting/performing any functions as the Secretary/Chief Executive Officer and/or any position Of the Ethics and Anti-Corruption Commission [EACC) and/or any other independent commissions and offices.



- viii. That The court is pleased to issue an order of judicial review by way of mandamus, compelling the respondents to start a new/fresh recruitment of Secretary/Chief Executive Officer and/or any position Of the Ethics and Anti-Corruption Commission [EACC) in strict compliance with relevant constitutional and legal provisions.
- ix. That order is hereby granted prohibiting the Respondents and any other person either by themselves, their agents and/or any other person(s) whatsoever from acting and/or giving effect to gazette notice no 16100 dated 5/12/2024 and/or any document/gazette of any other date notifying/legalizing the appointment of Mr. Abdi Ahmed Mohamud, MBS, and/or any other person appointed pursuant to section 16(1) of the EACC Act, 2011 as the Secretary/Chief Executive Officer Of the Ethics and Anti-Corruption Commission [EACC).
- x. That any other order or/and modification of petitioners' prayer(s) which this honourable court may deem fit so as to a achieve objects of justice for majority of Kenyans as a whole.
- xi. That This being a public interest Petition filed in defence of *the Constitution*, ordering each party herein to meet their costs.

### **The Petitioner's Case**

5. The Petitioners' case, as distilled from the Petition, the Supporting and Supplementary Affidavits, and the written submissions, is anchored on a strict and literal interpretation of the constitutional independence accorded to commissions under Chapter Fifteen of *the Constitution*. They contend that Articles 249, 250(12), and 252(1)(c) establish a self-contained and exhaustive framework governing the structure, staffing, and operations of independent constitutional commissions.
6. It is the Petitioners' submission that Article 249(2) expressly provides that commissions are subject only to *the Constitution* and the law, and are independent and not subject to direction or control by any person or authority. In their view, the requirement for parliamentary approval of the appointment of the Secretary/Chief Executive Officer under Section 16(1) of the EACC Act amounts to "direction or control" by the National Assembly, thereby undermining the core constitutional guarantee of independence.
7. The Petitioners further place reliance on Article 250(12), which provides that the Secretary to a commission shall be appointed by the commission, and Article 252(1)(c), which stipulates that each commission shall recruit its own staff. They submit that the terms "appoint" and "recruit," as employed in *the Constitution*, are comprehensive and exclusive, leaving no constitutional space for the involvement of a secondary approving authority. Consequently, they argue that the National Assembly, by subjecting the appointment to an approval process, impermissibly usurped the appointing authority constitutionally vested in the 1<sup>st</sup> Respondent.
8. Additionally, the Petitioners invoke the doctrine of separation of powers, contending that the arms of government together with independent constitutional commissions must operate within clearly demarcated spheres, free from undue interference by one another. They characterize the role assumed by the National Assembly in the appointment process as ultra vires and inconsistent with the limited oversight mandate contemplated by *the Constitution*. As a subsidiary argument, the Petitioners contend that, in any event, Article 93 defines Parliament as consisting of both the National Assembly and the Senate, and that the exclusion of the Senate from the approval process renders the impugned procedure constitutionally infirm.
9. On the constitutionality of Section 16(1) of the *Ethics and Anti-Corruption Commission Act*, 2011, the Petitioners submit that the provision is inconsistent with and repugnant to Articles 249, 250(12),



and 252(1)(c) of *the Constitution*. They argue that while constitutional commissions are empowered to recruit their own staff, the National Assembly's involvement in recruitment goes beyond permissible consultation or oversight and amounts to the assumption of functions reserved exclusively for an independent commission. In support of this position, the Petitioners place reliance on the decisions in *Entick v Carrington* (1765) 2 Wils KB, *Hardware & Ironmongery Ltd v Attorney-General* [1972] EA, and *In the Matter of the Interim Independent Electoral Commission* [2011] eKLR.

10. The Petitioners contend that the impugned process violated their legitimate expectation and that of the Kenyan public that all State organs would act strictly within their respective constitutional mandates and in fidelity to the rule of law. They submit that by undertaking a role not constitutionally assigned to it, the National Assembly defeated this legitimate expectation and acted in a manner inconsistent with constitutional governance.

## The Respondents' Cases

### The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case

11. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in their Grounds of Opposition and written submissions, defend the constitutionality of Section 16(1) of the *Ethics and Anti-Corruption Commission Act*. Their position is anchored on established principles of constitutional interpretation, including the presumption of constitutionality of statutes and the need for a holistic and purposive reading of *the Constitution*.
12. They submit that the involvement of the National Assembly in the approval of senior officers is not unique to the EACC, noting that several other constitutional commissions and independent offices similarly subject the appointment of their chief executive and accounting officers to parliamentary approval. They further contend that Article 254(1) of *the Constitution* obliges constitutional commissions to submit annual reports to Parliament, a requirement which, in their view, reinforces Parliament's oversight mandate without derogating from the institutional autonomy of such commissions.
13. The Respondents argue that the independence guaranteed under Article 249 of *the Constitution* is not absolute and does not imply institutional isolation. In this regard, they rely on the Supreme Court's decision in *In the Matter of the Interim Independent Electoral Commission* [2011] eKLR, which underscored that independence is calibrated to the discharge of a commission's constitutional mandate and does not exclude coordination or interaction with other State organs.
14. Central to their case is the assertion that the role of the National Assembly in the impugned appointment process is properly grounded in its oversight function under Article 95(5) of *the Constitution*, which mandates the Assembly to exercise oversight over State organs. They contend that the approval process constitutes a legitimate and constitutionally sanctioned oversight mechanism intended to promote transparency, accountability, and public participation in the appointment of senior public officials. They draw a clear distinction between unconstitutional interference and lawful oversight, maintaining that the latter does not diminish or supplant the EACC's authority as the appointing body.
15. On the specific question of the constitutionality of Section 16(1) of the EACC Act, the Respondents submit that the Petitioners have failed to discharge the burden of demonstrating its inconsistency with *the Constitution*. They argue that the provision does not offend Article 250(12) since the appointing authority remains the Commission, and that parliamentary vetting does not, of itself, transform the National Assembly into the appointing authority. Rather, they submit, such vetting advances the constitutional values of transparency and public participation.



16. The Respondents further contend that the Petition falls short of the threshold established in *Anarita Karimi Njeru v Republic* [1979] KLR 154, as reaffirmed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, in that it cites constitutional provisions in broad and generic terms without demonstrating, with precision, how the Petitioners' rights were violated. They also argue that the Petition is devoid of sufficient evidentiary foundation, and that the material annexed to the supporting affidavit demonstrates that due process was adhered to in the recruitment of the 2<sup>nd</sup> Respondent.
17. With respect to the doctrine of legitimate expectation, the Respondents submit that no clear or specific representation was made to the Petitioners capable of founding such an expectation. They argue instead that the legitimate expectation of Kenyans is that appointments to public office are conducted in accordance with Articles 10 and 232 and Chapter Six of *the Constitution* standards which, they assert, were fully complied with in the recruitment and appointment of the 2<sup>nd</sup> Respondent.
18. In the premises, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents urge the Court to dismiss the Petition with costs.

### 3<sup>rd</sup> Respondent's Case

19. The 3<sup>rd</sup> Respondent's case, as set out in its Grounds of Opposition and written submissions, is founded on the contention that the appointment of the 2<sup>nd</sup> Respondent was undertaken by the 1<sup>st</sup> Respondent, a fact which the Petitioners do not dispute, as evidenced in the supporting affidavit of Dr. Magare Gikenyi. The 3<sup>rd</sup> Respondent further submits that the Petitioners' complaint is legally misconceived, as the Ethics and Anti-Corruption Commission (EACC) is not listed among the commissions enumerated in Article 248 of *the Constitution*.
20. It is contended that the EACC was established pursuant to legislation enacted under Article 79 of *the Constitution*, which empowers Parliament to create and define the terms of office and governance of such commissions. Accordingly, the argument that Parliament cannot legislate on the appointment of the Commission's Secretary lacks constitutional foundation. The 3<sup>rd</sup> Respondent submits that the National Assembly's approval of appointments constitutes a legitimate exercise of oversight, which serves to enhance accountability and transparency without undermining the independence of the Commission. Reliance is placed on the decisions in *Judicial Service Commission v Speaker of the National Assembly & 4 others*; *Commission on Administrative Justice (Amicus Curiae)*; *Law Society of Kenya (Interested Party)* [2014] KEHC 7493 (KLR) and *National Land Commission v Attorney-General & 5 others*; *Kituo Cha Sheria & another (Amicus Curiae)* [2015] KESC 3 (KLR).
21. On the separation of powers, the 3<sup>rd</sup> Respondent argues that government agencies operate within a system of checks and balances in which Parliament is empowered to exercise legitimate oversight. In this regard, it relies on *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR). It is further submitted that, notwithstanding the Commission's autonomy, it remains subject to *the Constitution* and validly enacted legislation, which includes parliamentary involvement in the approval of its chief executive.
22. The 3<sup>rd</sup> Respondent contends that the Petitioners have not adduced evidence or advanced a persuasive argument demonstrating how Section 16(1) of the EACC Act adversely affects the Commission's independence, powers, or functioning. They argue that the claim of unconstitutionality is unfounded, as *the Constitution*, read together with Article 79, clearly permits legislative provisions defining the terms of office of commissions. In the absence of any demonstration of a constitutional violation resulting from the parliamentary approval process, the 3<sup>rd</sup> Respondent urges the Court to dismiss the Petition with costs for lack of merit.



### **The 4<sup>th</sup> Respondent's Case**

23. The 4<sup>th</sup> Respondent's case, as set out in its Replying Affidavit and written submissions, is founded initially on a jurisdictional challenge. It is contended that the dispute, being premised on an appointment to office, falls within the exclusive jurisdiction of the Employment and Labour Relations Court pursuant to Article 162(2) of *the Constitution*. In support of this position, the 4<sup>th</sup> Respondent relies on the Supreme Court's decision in *Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others* (Petitions E004 & E002 of 2023, consolidated) [2024] KESC 3 (KLR), in which the Court emphasized that constitutional courts lack jurisdiction to entertain matters that are exclusively employment-related under Article 162(2).
24. On the substantive issues, the 4<sup>th</sup> Respondent robustly defends its role in the approval process. It submits that other independent commissions and offices, including the Salaries and Remuneration Commission and the Office of the Auditor-General, similarly involve the National Assembly in the approval of their chief executive officers. This practice, the Respondent argues, reflects a consistent legislative approach that aligns with *the Constitution*, thereby attracting the presumption of constitutionality in respect of Section 16(1) of the EACC Act a presumption that the Petitioners have not successfully rebutted.
25. The 4<sup>th</sup> Respondent further emphasizes that its oversight function under Article 95(5) is a substantive constitutional power that must be given full effect. The approval process, it submits, constitutes a specific and legitimate exercise of this general oversight mandate, designed to promote transparency, safeguard public confidence, and ensure that appointees to senior offices meet the integrity standards expected by the citizenry. The Respondent also notes that the Petitioners' argument regarding the involvement of the Senate is misplaced, as the Senate's constitutional role primarily concerns the protection of county interests. Since the functions of the EACC are national in scope, there is no basis for the Senate's participation in this approval process.
26. In the premises, the 4<sup>th</sup> Respondent urges the Court to dismiss the Petition with costs.

### **The 5<sup>th</sup> Respondent and Interested Party**

27. The 5<sup>th</sup> Respondent and the Interested Party, though duly served, did not file any substantive response or written submissions in relation to the Petition. The Court is satisfied that both were properly served and had due notice of the pendency of these proceedings. It is accordingly noted that they are entitled, under *the Constitution*, to exercise their right not to participate in the proceedings.

### **Analysis And Determination**

28. Having carefully considered the pleadings, the affidavits, the annexures, and the submissions of the parties, finds that the following issues arise for determination:
  - i. Whether this Court has jurisdiction to entertain this Petition.
  - ii. Whether Section 16(1) of the *Ethics and Anti-Corruption Commission Act*, No. 22 of 2011, is inconsistent with Articles 249, 250(12), and 252(1)(c) of *the Constitution* and is therefore unconstitutional.
  - iii. Whether the approval of the 2<sup>nd</sup> Respondent by the 4<sup>th</sup> Respondent was unconstitutional, null, and void.
  - iv. Whether the Petitioners are entitled to the reliefs sought.



### Whether this Court has jurisdiction to entertain this Petition.

29. The 4<sup>th</sup> Respondent raised an objection contending that this Court lacks jurisdiction, arguing that the dispute, being centered on an employment appointment, falls within the exclusive domain of the Employment and Labour Relations Court (ELRC). This objection, while ostensibly technical, strikes at the heart of this Court's authority and must be resolved at the outset.
30. Jurisdiction is the cornerstone of any judicial proceeding. The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR underscored that a court's jurisdiction flows from *the Constitution* or legislation and cannot extend its authority beyond what was granted by law.
31. Article 165(3) of *the Constitution* delineates the jurisdiction of the High Court. Of relevance is clause (d), which grants this Court jurisdiction to hear any question respecting the interpretation of *the Constitution*. This Article states thus:
- d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
- (iv) a question relating to conflict of laws under Article 191;
  - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
  - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
  - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
- Conversely, Article 162(2) mandates Parliament to establish courts with the status of the High Court with jurisdiction over employment and labour relations and environment and the use and occupation of and title to land. Pursuant to this, the ELRC was established, and its jurisdiction is set out in Section 12 of the *Employment and Labour Relations Court Act*. This jurisdiction is exclusive over disputes relating to employment and labour relations.
32. The critical question, therefore, is how the instant dispute should be characterised: is it primarily an employment matter with incidental constitutional elements, or is it a pure constitutional dispute concerning the interpretation of *the Constitution* and the validity of a statute?
33. A careful perusal of the Petition reveals that its gravamen is a direct challenge to the constitutional validity of Section 16(1) of the EACC Act. The Petitioners are not employees of the EACC, nor do they claim any employer-employee relationship with any of the Respondents. Their grievance is not with the terms of the 2<sup>nd</sup> Respondent's employment, his dismissal, or any other classic labour issue. Their grievance is that a State organ, the National Assembly, acted ultra vires its constitutional powers by participating in a process from which they believe it is constitutionally barred.



34. The Supreme Court's guidance in *Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others* (supra) is instructive. The Court held at paragraph 87 that:

“For the avoidance of doubt, and so as to stop the pendulum of jurisdictional re-jigging that has characterised this case from the beginning, we hereby restate that the ELRC has jurisdiction to determine the constitutional validity of a statute in matters employment and labour. Suffice it to say that the statute in question must be in focus and at the centre of the dispute in question. Having so declared, there remains the question as to whether the ELRC rightly and judiciously, exercised its jurisdiction in declaring the NSSF Act 2013, unconstitutional. It is no longer a question whether the Court had or lacked jurisdiction to so do, but whether it correctly exercised its jurisdiction in declaring the Act unconstitutional. Had the Court of Appeal not found to the contrary, it would have answered this question comprehensively when the appeal came up for hearing before it. But having found that in declaring the NSSF Act 2013, unconstitutional, the ELRC had acted without jurisdiction, the appellate court could not pronounce itself on the merits of the trial court's findings. It had to down its tools and remit the matter to the court that had jurisdiction, in this case, the High Court. However, instead of remitting the matter as aforesaid, the appellate court went on to determine the merits of one issue, while leaving the others in abeyance. It is this scenario that brings us to the next issue for determination.”

35. The Court, however, went on to underscore a crucial caveat as follows:

“Having said so, we have to emphasize that the High Court retains the residual jurisdiction to determine whether any law is inconsistent with *the Constitution* within the meaning of article 165, bearing in mind the provisions of article 165(5)(b). It must also be restated that the High Court (as between it and courts established under article 162 of *the Constitution*), has the original and exclusive jurisdiction (without exception) to hear and determine applications for redress of denial, violation, or infringement of rights and fundamental freedoms in the Bill of Rights pursuant to articles 22 and 23 of *the Constitution* (See Supreme Court Judgment in the County Assemblies Forum v Attorney General & others; Pet No 22 of 2017, at Paragraph 56).”

36. In the present case, the dispute has nothing or little to do with employment and labour relations in the traditional sense. The core of the controversy is the demarcation of powers between an independent commission and the National Assembly a quintessential constitutional question. The employment context is merely the factual matrix in which this constitutional question has arisen. The principal legal thread running through the Petition is the interpretation of Chapter Fifteen of *the Constitution*.
37. Consequently, this Court finds that the objection on jurisdiction is without merit. The High Court, as the principal custodian of *the Constitution*, has the requisite jurisdiction under Articles 165(3)(b) and (d) to interpret *the Constitution* and determine the validity of the impugned statutory provision.

**Whether section 16(1) of the EACC Act is inconsistent with Articles 249, 250(12), and 252(1)(c) of *the Constitution***

38. This constitutes the core and most intricate issue in this Petition, requiring a careful balancing of two equally significant constitutional principles: the functional independence of commissions and the oversight role of Parliament.



39. The point of departure in this analysis is the principle of constitutional interpretation enshrined in Article 259(1). It is incumbent upon this Court to construe *the Constitution* in a manner that advances its underlying purposes, upholds its foundational values and principles, reinforces the rule of law and the protection of human rights, and fosters good governance.
40. *The Constitution* is not a mere aggregation of discrete or disconnected provisions, but a coherent and integrated whole, in which each component reinforces and sustains the others. This principle of holistic interpretation was underscored in *Konchellah & others v Chief Justice & President of Supreme Court of Kenya & others; Speaker of National Assembly & others (Interested Party)* [2021] KEHC 12609 (KLR), where the Court relied on the Court of Appeal decision in *Attorney General v Law Society of Kenya & 4 others* [2019] KECA 283 (KLR), which held that:
- “We also emphasize the principle of holistic interpretation where *the Constitution*, which has different Chapters and Articles is read as one document, not disjointed sections; where each provision is read as supporting the other and not destroying the other; where the provisions are all ultimately in harmonious symphony. In the case of *Tinyefuze vs. Attorney General of Uganda Constitutional Petition No. 1 of 1997* [1997] 3 UGCC the Uganda Constitutional Court put it thus: ‘The entire Constitution has to be read together as an integrated whole, not one particular provision destroying the other but each sustaining the other. This is the rule of harmony, the rule of completeness and exhaustiveness.’”
41. The Supreme Court, in *In the Matter of Kenya National Commission on Human Rights* [2014] eKLR, elucidated the meaning of a holistic interpretation when one of the counsel before it urged the Court to construe Article 163(6) of *the Constitution* in a manner that departed from its plain meaning under the guise of “holistic interpretation.” The Court held thus:
- “But what is meant by a ‘holistic interpretation of *the Constitution*’? It must mean interpreting *the Constitution* in context. It is the contextual analysis of a constitutional provision, reading it alongside and against other provisions, so as to maintain a rational explication of what *the Constitution* must be taken to mean in light of its history, of the issues in dispute, and of the prevailing circumstances. Such scheme of interpretation does not mean an unbridled extrapolation of discrete constitutional provisions into each other, so as to arrive at a desired result.”
42. The Petitioners' case rests on a literal and restrictive reading of Articles 249(2), 250(12), and 252(1)(c). There is undeniable force in their argument.
43. Article 249(2) of *the Constitution* provides:
- “The commissions and the holders of independent offices -
- (b) are independent and not subject to direction or control by any person or authority.”
- (a) are subject only to this Constitution and the law; and
44. Article 250(12) provides:
- “There shall be a Secretary to each commission who shall be—
- (b) the chief executive officer of the commission.”



- (a) appointed by the commission; and

45. Article 252(1) states:

“Each commission, and each holder of an independent office—

- (d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.”
- (c) shall recruit its own staff; and
- (b) has the powers necessary for conciliation, mediation and negotiation;
- (a) may conduct investigations on its own initiative or on a complaint made by a member of the public;

46. Article 249(2) constitutes a robust affirmation of the independence of commissions, shielding them from direction or control by any person or authority. Article 250(12) expressly provides that the Secretary shall be appointed by the commission, while Article 252(1)(c) mandates that each commission shall recruit its own staff. When considered in isolation, these provisions convey the impression of an unassailable bastion of autonomy in matters of staff recruitment.

47. However, constitutional interpretation cannot occur in isolation. *The Constitution* must be construed as a single, coherent instrument, with all relevant provisions considered in context. Central to this exercise is Article 95, which delineates the functions of the National Assembly. Of particular relevance is Article 95(5), which provides

“The National Assembly— ... (b) exercises oversight over State organs.”

48. The term “State organs” is defined in Article 260 to encompass a “commission.” Consequently, the EACC clearly falls within the scope of the National Assembly’s oversight. The central task for this Court is to delineate the scope and limits of this oversight in the specific context of appointments to key positions within the Commission.

49. The Supreme Court of Kenya has previously engaged with the interplay between independence and interdependence of constitutional commissions. In the seminal case of *In the Matter of the Interim Independent Electoral Commission* (supra), the Court observed that independence must be understood in functional terms, allowing commissions to operate free from external direction or control while remaining accountable within the constitutional framework. The court observed as follows:

“While bearing in mind that the various Commissions and independent offices are required to function free of subjection to ‘direction or control by any person or authority,’ we hold that this expression is to be accorded its ordinary and natural meaning; and it means that the Commissions and independent offices, in carrying out their functions, are not to take orders or instructions from organs or persons outside their ambit. These Commissions or independent offices must, however, operate within the terms of *the Constitution* and the law: the ‘independence clause’ does not accord them *carte blanche* to act or conduct themselves on whim; their independence is, by design, configured to the execution of their mandate, and performance of their functions as prescribed in *the Constitution* and the law. For due operation in the matrix, ‘independence’ does not mean ‘detachment’, ‘isolation’ or ‘disengagement’ from other players in public governance. Indeed, for practical purposes,



an independent Commission will often find it necessary to co-ordinate and harmonize its activities with those of other institutions of government, or other Commissions, so as to maximize results, in the public interest. Constant consultation and co-ordination with other organs of government, and with civil society as may be necessary, will ensure a seamless, and an efficient and effective rendering of service to the people in whose name *the Constitution* has instituted the safeguards in question. The moral of this recognition is that Commissions and independent offices are not to plead ‘independence’ as an end in itself; for public-governance tasks are apt to be severely strained by possible ‘clashes of independences’.”

50. This reasoning dismantles the notion of absolute, unbridled independence, replacing it with a conception of functional independence situated within a structured ecosystem of checks and balances. The Court recognized that, in a constitutional democracy, no single institution exercises power in splendid isolation.
51. The pivotal question, therefore, is whether a requirement for parliamentary approval constitutes impermissible direction or control, or whether it represents a legitimate form of oversight and co-ordination.
52. In this regard, guidance is found in the reasoning of the South African Constitutional Court in *Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others* (CCT27/95) [1995] ZACC 8; 1995 (10) BCLR 1289; 1995 (4) SA 877 (22 September 1995), where the Court, addressing the exercise of the President’s powers, held that constitutional powers must not be construed in isolation from other constitutional mandates. Rather, the spirit of *the Constitution* often requires interplay and harmonization among organs of State.
53. Applied to the present case, the EACC’s power to “appoint” under Article 250(12) cannot be interpreted as excluding the National Assembly’s power to “oversee” under Article 95(5). The approval process constitutes a structured and specific mechanism through which the National Assembly exercises its oversight mandate. It serves as a constitutional check to ensure that the recruitment process is genuinely “open, transparent and competitive,” as prescribed by Section 16(1) of the EACC Act, and that the appointee meets the high standards of integrity and competence expected of an officer charged with combating corruption.
54. This interpretation is consonant with the national values and principles of governance enshrined in Article 10, including democracy and participation of the people, good governance, integrity, transparency, and accountability. Parliamentary approval, which necessarily entails public hearings, is an important instrument for operationalizing these principles and enhancing public confidence in the institution.
55. Moreover, the practice of parliamentary approval for chief executive officers of independent commissions is not peculiar to the EACC. As noted by the 4<sup>th</sup> Respondent, the Secretary of the Salaries and Remuneration Commission, the Clerk of Parliament, and the Clerk of the Senate, who is also the Secretary of the Parliamentary Service Commission, are appointed through analogous processes. While not determinative, this consistent legislative practice demonstrates a settled constitutional understanding that accommodates a legitimate oversight role for Parliament.
56. The Petitioners’ apprehensions regarding legislative overreach are acknowledged. However, oversight must be distinguished from control. Oversight entails a retrospective or confirmatory scrutiny to verify due process and suitability. Control, by contrast, would involve dictating the shortlist, the interview process, or the final selection in contradiction of the EACC’s discretion. In the current framework, the EACC conducts the recruitment and selects its nominee, who is subsequently presented to the



National Assembly for approval. This preserves the EACC's primacy as the appointing authority, with the Assembly functioning as a constitutional safeguard or sieve.

57. Accordingly, this Court finds that Section 16(1) of the EACC Act, when construed as a specific mechanism enabling the National Assembly to exercise its overarching oversight function under Article 95(5), is not inconsistent with Articles 249, 250(12), and 252(1)(c) of *the Constitution*. Rather, it represents a constitutionally permissible interplay between the independence of a commission and the democratic oversight of Parliament, both of which are fundamental pillars of our constitutional architecture.

**Whether the approval of the 2<sup>nd</sup> Respondent by the 4<sup>th</sup> Respondent was unconstitutional, null, and void.**

58. In light of the foregoing determination on the second issue, it follows that the process undertaken by the National Assembly to approve the 2<sup>nd</sup> Respondent was constitutionally sound. The National Assembly acted squarely within its statutory and constitutional mandate.
59. The Petitioners' subsidiary contention that the Senate ought to have been involved is misconceived and without merit. The role of the Senate, as articulated in Article 96 of *the Constitution*, is principally concerned with safeguarding the interests of counties and county governments. The appointment of the Chief Executive Officer of the EACC, a national commission with a mandate that extends across the entire Republic, does not implicate the functional competencies of the Senate. The National Assembly, as the representative chamber of the people at the national level, is the constitutionally appropriate organ to exercise oversight over national State organs such as the EACC.
60. The Petitioners further alleged infringements of their fundamental rights, including the right to fair administrative action and freedom from discrimination. These allegations, however, were generalized and lacked particularization. The Petitioners failed to demonstrate how, in their capacity as members of the public, their specific personal rights were adversely affected by a process that, by its nature, was of general application. In this regard, the Petition does not meet the specificity standard articulated in *Anarita Karimi Njeru v Republic* (supra). No evidence was adduced to establish that the recruitment or approval process was discriminatory, unfair, or irrational in its application to the Petitioners themselves.
61. In consequence, this Court is satisfied that the approval of the 2<sup>nd</sup> Respondent by the National Assembly was conducted pursuant to a constitutionally valid process.

**Whether the Petitioners are entitled to the reliefs sought**

62. The Petitioners' claim for relief is entirely contingent upon a finding that the appointment process was unconstitutional and invalid. In light of this Court's determination that Section 16(1) of the EACC Act is constitutionally sound and that the process undertaken was lawful and proper, the foundation for the reliefs sought is wholly undermined.
63. Consequently, declarations of unconstitutionality cannot be granted. Similarly, the remedies of certiorari, prohibition, and mandamus are unwarranted and lack merit. The appointment of the 2<sup>nd</sup> Respondent is therefore lawful, valid, and in full compliance with *the Constitution*.
64. For the foregoing reasons, this Court makes the following determinations:
- a. The High Court has jurisdiction to entertain and determine this Petition. The objection raised by the 4<sup>th</sup> Respondent is without merit. The Petition principally concerns the interpretation



of *the Constitution* and the validity of a statutory provision, and is not a dispute concerning employment or labour relations in the ordinary sense.

- b. Section 16(1) of the *Ethics and Anti-Corruption Commission Act*, No. 22 of 2011, is not inconsistent with Articles 249, 250(12), and 252(1)(c) of *the Constitution* and is therefore constitutional. The provision constitutes a lawful and specific mechanism through which the National Assembly may exercise its oversight role under Article 95(5) of *the Constitution*.
- c. The approval of the 2<sup>nd</sup> Respondent, Mr. Abdi Ahmed Mohamud, by the 4<sup>th</sup> Respondent, the National Assembly, and his subsequent appointment by the 1<sup>st</sup> Respondent, was constitutional, lawful, and valid. The process followed was within the statutory and constitutional framework and preserved the functional independence of the Ethics and Anti-Corruption Commission while allowing for the legitimate exercise of parliamentary oversight.
- d. The Petitioners' claims of infringement of their fundamental rights, including fair administrative action and freedom from discrimination, are unsubstantiated. The Petitioners have not demonstrated personal, particularized harm arising from the appointment process.
- e. The reliefs sought, including declarations of unconstitutionality and orders of certiorari, prohibition, and mandamus, are therefore declined as the Petition has no merit.

65. Accordingly, the Petition is dismissed in its entirety. No orders as to costs.

Orders accordingly. File closed accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

**BAHATI MWAMUYE MBS**

**JUDGE**

In the presence of: -

Counsel for the Petitioners – No appearance

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents – Ms. Faith Ngethe

Counsel for the 3<sup>rd</sup> Respondent – No appearance

Counsel for the 4<sup>th</sup> Respondent – Ms. Nganyi

Counsel for the 5<sup>th</sup> Respondent – No appearance

Counsel for the Interested Party – No appearance

Court Assistant - Ms. Lwambia

